

1 HB260  
2 105547-1  
3 By Representatives Keahey and Collier  
4 RFD: Judiciary  
5 First Read: 03-FEB-09

8 SYNOPSIS: This bill would amend the driving under the  
9 influence law and penalties for violations.

10 The bill would provide that any prior  
11 conviction, regardless of date and regardless of  
12 whether it was in-state or out-of-state, will count  
13 as a prior conviction for purposes of sentencing  
14 repeat offenders; increase the community service  
15 provision for a second offense, including  
16 attendance of a victims impact program; increase  
17 the mandatory minimum sentence for a fourth offense  
18 not subject to probation or suspension; double the  
19 minimum sentence for a person convicted of DUI who  
20 has .15 percent or greater by weight of alcohol in  
21 his or her blood; and renumber and make grammatical  
22 corrections to Section 32-5A-191.

23 Amendment 621 of the Constitution of Alabama  
24 of 1901, now appearing as Section 111.05 of the  
25 Official Recompilation of the Constitution of  
26 Alabama of 1901, as amended, prohibits a general  
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from  
2 becoming effective with regard to a local  
3 governmental entity without enactment by a 2/3 vote  
4 unless: it comes within one of a number of  
5 specified exceptions; it is approved by the  
6 affected entity; or the Legislature appropriates  
7 funds, or provides a local source of revenue, to  
8 the entity for the purpose.

9 The purpose or effect of this bill would be  
10 to require a new or increased expenditure of local  
11 funds within the meaning of the amendment. However,  
12 the bill does not require approval of a local  
13 governmental entity or enactment by a 2/3 vote to  
14 become effective because it comes within one of the  
15 specified exceptions contained in the amendment.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 Relating to driving under the influence; to amend  
22 Section 32-5A-191, Code of Alabama 1975, to further define the  
23 crime and provide penalties; to require a person who is  
24 initially convicted of the offense of driving under the  
25 influence of alcohol or drugs to attend a single session  
26 conducted by a victim's impact program; and in connection  
27 therewith would have as its purpose or effect the requirement

1 of a new or increased expenditure of local funds within the  
2 meaning of Amendment 621 of the Constitution of Alabama of  
3 1901, now appearing as Section 111.05 of the Official  
4 Recompilation of the Constitution of Alabama of 1901, as  
5 amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. The act shall be known as the "Officer  
8 Eddie McCrory Act."

9 Section 2. Section 32-5A-191, Code of Alabama 1975,  
10 is amended to read as follows:

11 "§32-5A-191.

12 "(a) A person shall not drive, operate, or be in  
13 actual physical control of any vehicle while:

14 "(1) There is 0.08 percent or more by weight of  
15 alcohol in his or her blood;

16 "(2) Under the influence of alcohol;

17 "(3) Under the influence of a controlled substance  
18 to a degree which renders him or her incapable of safely  
19 driving;

20 "(4) Under the combined influence of alcohol and a  
21 controlled substance to a degree which renders him or her  
22 incapable of safely driving; or

23 "(5) Under the influence of any substance which  
24 impairs the mental or physical faculties of such person to a  
25 degree which renders him or her incapable of safely driving.

26 "(b) A person who is under the age of 21 years shall  
27 not drive or be in actual physical control of any vehicle if

1       there is .02 ~~percentage~~ percent or more by weight of alcohol  
2       in his or her blood. The Department of Public Safety shall  
3       suspend or revoke the driver's license of any person,  
4       including, but not limited to, a juvenile, child, or youthful  
5       offender, convicted or adjudicated of, or subjected to a  
6       finding of delinquency based on this subsection.  
7       Notwithstanding the foregoing, upon the first violation of  
8       this subsection by a person under the age of 21 years whose  
9       blood alcohol level is between .02 and .08, the person's  
10      driver's license or driving privilege shall be suspended for a  
11      period of 30 days in lieu of any penalties provided in  
12      subsection (e) of this section and there shall be no  
13      disclosure, other than to courts, law enforcement agencies,  
14      and the person's employer, by any state entity or person, of  
15      any information, documents, or records relating to the  
16      person's arrest, conviction, or adjudication of or finding of  
17      delinquency based on this subsection.

18               "All persons, except as otherwise provided in this  
19      subsection for a first offense, including, but not limited to,  
20      a juvenile, child, or youthful offender, convicted or  
21      adjudicated of, or subjected to a finding of delinquency based  
22      on this subsection shall be fined pursuant to this section,  
23      notwithstanding any other law to the contrary, and the person  
24      shall also be required to attend and complete a DUI or  
25      substance abuse court referral program in accordance with  
26      subsection (i).

1           "(c) (1) A school bus or day care driver shall not  
2 drive or be in actual physical control of any vehicle while in  
3 performance of his or her duties if there is greater than .02  
4 ~~percentage~~ percent by weight of alcohol in his or her blood. A  
5 person convicted pursuant to this subsection shall be subject  
6 to the penalties provided by this section except that on the  
7 first conviction the Director of Public Safety shall suspend  
8 the driving privilege or driver's license for a period of one  
9 year.

10           "(2) A person shall not drive or be in actual  
11 physical control of a commercial motor vehicle, as defined in  
12 49 CFR Part 390.5 of the Federal Motor Carrier Safety  
13 Regulations as adopted pursuant to Section 32-9A-2, if there  
14 is .04 ~~percentage~~ percent or greater by weight of alcohol in  
15 his or her blood. Notwithstanding the other provisions of this  
16 section, the commercial driver's license or commercial driving  
17 privilege of a person convicted of violating this subdivision  
18 shall be suspended for the period provided in accordance with  
19 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and  
20 the person's regular driver's license or privilege to drive a  
21 regular motor vehicle shall be governed by the remainder of  
22 this section if the person is guilty of a violation of another  
23 provision of this section.

24           "(d) The fact that any person charged with violating  
25 this section is or has been legally entitled to use alcohol or  
26 a controlled substance shall not constitute a defense against  
27 any charge of violating this section.

1           "(e) Upon first conviction, a person violating this  
2 section shall be punished by imprisonment in the county or  
3 municipal jail for not more than one year, or by fine of not  
4 less than six hundred dollars (\$600) nor more than two  
5 thousand one hundred dollars (\$2,100), or by both a fine and  
6 imprisonment. The sentence shall include a mandatory minimum  
7 sentence, which is not subject to suspension or probation, of  
8 imprisonment in the county or municipal jail for not less than  
9 two consecutive days or community service for not less than 30  
10 days, and the person shall be required to attend a single  
11 session conducted by a victim's impact program. For purposes  
12 of this subsection, "victim's impact program" means a program  
13 operated by a county, a municipality, or a not-for-profit  
14 organization authorized by a county or municipality, or a  
15 combination thereof, which provides educational information  
16 concerning the impact on victims of operating a motor vehicle  
17 while under the influence of alcohol or drugs. In addition, on  
18 a first conviction, the Director of Public Safety shall  
19 suspend the driving privilege or driver's license of the  
20 person convicted for a period of 90 days.

21           "(f) For purposes of imposing a sentence against a  
22 repeat offender under this section, a "prior conviction" is a  
23 conviction or plea of nolo contendere regardless of the date  
24 of conviction or plea of nolo contendere for driving under the  
25 influence of alcohol or drugs, or both, in this state, a  
26 municipality or county within this state, or another state or

1 U.S. territory, or a municipality or political subdivision  
2 thereof.

3 ~~"(f) (1) On a second conviction within a five-year~~  
4 ~~period,~~ A person convicted of violating this section who has  
5 only one prior conviction shall be punished by a fine of not  
6 less than one thousand one hundred dollars (\$1,100) nor more  
7 than five thousand one hundred dollars (\$5,100) and by  
8 imprisonment, which may include hard labor, in the county or  
9 municipal jail for not more than one year. The sentence shall  
10 include a mandatory minimum sentence, which is not subject to  
11 suspension or probation, of imprisonment in the county or  
12 municipal jail for not less than five consecutive days or  
13 community service for not less than ~~30~~ 60 days. In addition  
14 the Director of Public Safety shall revoke the driving  
15 privileges or driver's license of the person convicted for a  
16 period of one year.

17 ~~"(g) (2) On a third conviction,~~ A person convicted  
18 of violating this section who has only two prior convictions  
19 shall be punished by a fine of not less than two thousand one  
20 hundred dollars (\$2,100) nor more than ten thousand one  
21 hundred dollars (\$10,100) and by imprisonment, which may  
22 include hard labor, in the county or municipal jail for not  
23 less than 60 days nor more than one year, to include a minimum  
24 of 60 days which shall be served in the county or municipal  
25 jail ~~and~~ which cannot be probated or suspended. In addition,  
26 the Director of Public Safety shall revoke the driving



1 privilege or driver's license of the person convicted for a  
2 period of three years.

3 ~~"(h) (3) On a fourth or subsequent conviction, a~~ A  
4 person convicted of violating this section who has three or  
5 more prior convictions or a prior felony conviction under this  
6 section shall be guilty of a Class C felony and punished by a  
7 fine of not less than four thousand one hundred dollars  
8 (\$4,100) nor more than ten thousand one hundred dollars  
9 (\$10,100) and by imprisonment of not less than one year and  
10 one day nor more than 10 years, to include a mandatory minimum  
11 confinement of 180 days which shall be served in the county  
12 jail which cannot be probated or suspended. Any term of  
13 imprisonment may include hard labor for the county or state,  
14 ~~and where.~~ Where imprisonment does not exceed three years,  
15 confinement may be in the county jail. Where imprisonment does  
16 not exceed one year and one day, confinement shall be in the  
17 county jail. ~~The minimum sentence shall include a term of~~  
18 ~~imprisonment for at least one year and one day, provided,~~  
19 ~~however, that there shall be a minimum mandatory sentence of~~  
20 ~~10 days which shall be served in the county jail. The~~  
21 ~~remainder~~ Any portion of the sentence in excess of 180 days  
22 may be suspended or probated, but only if as a condition of  
23 probation the defendant enrolls and successfully completes a  
24 state certified chemical dependency program recommended by the  
25 court referral officer and approved by the sentencing court.  
26 Where probation is granted, the sentencing court may, in its  
27 discretion, and where monitoring equipment is available, place

1 the defendant on house arrest under electronic surveillance  
2 during the probationary term. In addition to the other  
3 penalties authorized, the Director of Public Safety shall  
4 revoke the driving privilege or driver's license of the person  
5 convicted for a period of five years.

6 "The Alabama habitual felony offender law shall not  
7 apply to a conviction of a felony pursuant to this ~~subsection~~  
8 subdivision, and a conviction of a felony pursuant to this  
9 ~~subsection~~ subdivision shall not be a felony conviction for  
10 purposes of the enhancement of punishment pursuant to  
11 Alabama's habitual felony offender law.

12 "(g) When any person convicted of violating this  
13 section is found to have had at least .15 percent or more by  
14 weight of alcohol in his or her blood within four hours of  
15 operating or being in actual physical control of a vehicle, he  
16 or she shall be sentenced to at least double the mandatory  
17 minimum punishment that the person would have received if he  
18 or she had less than .15 percent by weight of alcohol in his  
19 or her blood, and otherwise to include the following:

20 "(1) If the adjudicated offense is a felony, the  
21 minimum punishment shall be imprisonment for one year.

22 "(2) If the adjudicated offense is a first offense,  
23 the Director of Public Safety shall suspend the driving  
24 privileges or driver's license of the person convicted for a  
25 period of one year.

26 "(h) When any person at least 21 years of age or  
27 older is convicted of violating this section and it is found

1 that a child under the age of 14 years was present in the  
2 vehicle at the time of the offense, the convicted person shall  
3 be sentenced to at least double the minimum punishment that  
4 the person could have received if the child had not been  
5 present in the motor vehicle.

6           "(i) In addition to the penalties provided herein,  
7 any person convicted of violating this section shall be  
8 referred to the court referral officer for evaluation and  
9 referral to appropriate community resources. The defendant  
10 shall, at a minimum, be required to complete a DUI or  
11 substance abuse court referral program approved by the  
12 Administrative Office of Courts and operated in accordance  
13 with provisions of the Mandatory Treatment Act of 1990,  
14 Sections 12-23-1 to 12-23-19, inclusive. The Department of  
15 Public Safety shall not ~~reissue~~ reinstate a driver's license  
16 to a person convicted under this section without receiving  
17 proof that the defendant has successfully completed the  
18 required program.

19           "(j) Neither reckless driving nor any other traffic  
20 infraction is a lesser included offense under a charge of  
21 driving under the influence of alcohol or of a controlled  
22 substance.

23           "(k) Except for fines collected for violations of  
24 this section charged pursuant to a municipal ordinance, fines  
25 collected for violations of this section shall be deposited to  
26 the State General Fund; however, beginning October 1, 1995, of  
27 any amount collected over two hundred fifty dollars (\$250) for

1 a first conviction, over five hundred dollars (\$500) for a  
2 second conviction ~~within five years~~, over one thousand dollars  
3 (\$1,000) for a third conviction ~~within five years~~, and over  
4 two thousand dollars (\$2,000) for a fourth or subsequent  
5 conviction ~~within five years~~, the first one hundred dollars  
6 (\$100) of that additional amount shall be deposited to the  
7 Alabama Chemical Testing Training and Equipment Trust Fund,  
8 after three percent of the one hundred dollars (\$100) is  
9 deducted for administrative costs, and beginning October 1,  
10 1997, and thereafter, the second one hundred dollars (\$100) of  
11 that additional amount shall be deposited in the Impaired  
12 Drivers Trust Fund after deducting five percent of the one  
13 hundred dollars (\$100) for administrative costs and the  
14 remainder of the funds shall be deposited to the State General  
15 Fund. Fines collected for violations of this section charged  
16 pursuant to a municipal ordinance where the total fine is paid  
17 at one time shall be deposited as follows: The first three  
18 hundred fifty dollars (\$350) collected for a first conviction,  
19 the first six hundred dollars (\$600) collected for a second  
20 conviction ~~within five years~~, the first one thousand one  
21 hundred dollars (\$1,100) collected for a third conviction, and  
22 the first two thousand one hundred dollars (\$2,100) collected  
23 for a fourth or subsequent conviction shall be deposited to  
24 the State Treasury with the first one hundred dollars (\$100)  
25 collected for each conviction credited to the Alabama Chemical  
26 Testing Training and Equipment Trust Fund and the second one  
27 hundred dollars (\$100) to the Impaired Drivers Trust Fund

1 after deducting five percent of the one hundred dollars (\$100)  
2 for administrative costs and depositing this amount in the  
3 general fund of the municipality, and the balance credited to  
4 the State General Fund. Any amounts collected over these  
5 amounts shall be deposited as otherwise provided by law. Fines  
6 collected for violations of this section charged pursuant to a  
7 municipal ordinance, where the fine is paid on a partial or  
8 installment basis, shall be deposited as follows: The first  
9 two hundred dollars (\$200) of the fine collected for any  
10 conviction shall be deposited to the State Treasury with the  
11 first one hundred dollars (\$100) collected for any conviction  
12 credited to the Alabama Chemical Testing Training and  
13 Equipment Trust Fund and the second one hundred dollars (\$100)  
14 for any conviction credited to the Impaired Drivers Trust Fund  
15 after deducting five percent of the one hundred dollars (\$100)  
16 for administrative costs and depositing this amount in the  
17 general fund of the municipality. The second three hundred  
18 dollars (\$300) of the fine collected for a first conviction,  
19 the second eight hundred dollars (\$800) collected for a second  
20 conviction, the second one thousand eight hundred dollars  
21 (\$1,800) collected for a third conviction, and the second  
22 three thousand eight hundred dollars (\$3,800) collected for a  
23 fourth conviction shall be divided with 50 percent of the  
24 funds collected to be deposited to the State Treasury to be  
25 credited to the State General Fund and 50 percent deposited as  
26 otherwise provided by law for municipal ordinance violations.  
27 Any amounts collected over these amounts shall be deposited as

1 otherwise provided by law for municipal ordinance violations.  
2 Notwithstanding any provision of law to the contrary, 90  
3 percent of any fine assessed and collected for any DUI offense  
4 charged by municipal ordinance violation in district or  
5 circuit court shall be computed only on the amount assessed  
6 over the minimum fine authorized, and upon collection shall be  
7 distributed to the municipal general fund with the remaining  
8 10 percent distributed to the State General Fund.

9 "(l) A person who has been arrested for violating  
10 this section shall not be released from jail under bond or  
11 otherwise, until there is less than the same percent by weight  
12 of alcohol in his or her blood as specified in subsection  
13 (a)(1) or, in the case of a person who is under the age of 21  
14 years, subsection (b) hereof.

15 "(m) Upon verification that a defendant arrested  
16 pursuant to this section is currently on probation from  
17 another court of this state as a result of a conviction for  
18 any criminal offense, the prosecutor shall provide written or  
19 oral notification of the defendant's subsequent arrest and  
20 pending prosecution to the court in which the prior conviction  
21 occurred.

22 ~~"(n) When any person over the age of 21 years is~~  
23 ~~convicted pursuant to this section and a child under the age~~  
24 ~~of 14 years was present in the vehicle at the time of the~~  
25 ~~offense, the defendant shall be sentenced to double the~~  
26 ~~minimum punishment that the person would have received if the~~  
27 ~~child had not been present in the motor vehicle.~~

1           ~~"(o) A prior conviction within a five-year period~~  
2 ~~for driving under the influence of alcohol or drugs from this~~  
3 ~~state, a municipality within this state, or another state or~~  
4 ~~territory or a municipality of another state or territory~~  
5 ~~shall be considered by a court for imposing a sentence~~  
6 ~~pursuant to this section.~~

7           ~~"(p)~~ (n) Any person convicted of driving under the  
8 influence of alcohol, or a controlled substance, or both, or  
9 any substance which impairs the mental or physical faculties  
10 in violation of this section, a municipal ordinance adopting  
11 this section, or a similar law from another state or territory  
12 or a municipality of another state or territory more than once  
13 ~~in a five-year period~~ shall have his or her motor vehicle  
14 registration for all vehicles owned by the repeat offender  
15 suspended by the Alabama Department of Revenue for the  
16 duration of the offender's driver's license suspension period,  
17 unless such action would impose an undue hardship to any  
18 individual, not including the repeat offender, who is  
19 completely dependent on the motor vehicle for the necessities  
20 of life, including any family member of the repeat offender  
21 and any co-owner of the vehicle."

22           Section 3. Although this bill would have as its  
23 purpose or effect the requirement of a new or increased  
24 expenditure of local funds, the bill is excluded from further  
25 requirements and application under Amendment 621, now  
26 appearing as Section 111.05 of the Official Recompilation of  
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 4. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.